IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8579 OF 2003

M/s. GTCL Mobile-Com Technology)
limited and anr.) .... Petitioners

versus

The Bank of Rajasthan ltd.)
and others) . Respondents.

Shri V.V.Thaker with H.J.Thackar Senior counsel i/b.
Bhavesh Parmar & Co. for the petitioner.
Mr. Pratik Seksana with Ms. S. Menon and M.Coomar i/b
Paras Kuhat and Associates for Respondents.

CORAM; V.G. PALSHIKAR &
V.R. KINGAONKAR, JJ.

DATED; 27th February, 2006.

JUDGMENT: (Per Palshikar, J.)

1. By this petition, the petitioner, which is a company, duly registered under the Companies Act, has challenged the order dated 14-11-2003 in O.A. NO. 380 of 2000 pending on the file of Debt Recovery Tribunal Ahmedabad and order dated 1-12-2003 passed in Misc. Appeal No.374 of 2003 by the Debt Recovery Appellate Tribunal, Bombay. Facts necessary for adjudication of this petition, stated briefly, are as under:

2. The respondent no.1 Bank of Rajasthan, on 27-6-2000

filed O.A. No. 380/2000 before the DRT Jaipur for recovering a sum of Rs.10.8 crores and odd with interest and costs. The DRT Jaipur, by its order dated 16-10-2000 held that it has no territorial jurisdiction to entertain the said application and therefore, returned the application for presentation to proper forum, to the bank.

3. The bank instead of preferring an appeal as provided by section 20 of the Recovery of Debts due to the Banks and Financial Institutions Act 1993 (hereinafter referred to as the Act), filed writ petition under Article 227 of the Constitution of India in the Jaipur Bench of Rajasthan High Court. During the course of hearing of this writ petition, on 14-5-2001 the bank agreed to transfer the O.A. No.380/2000 to DRT Ahmedabad. In the Tribunal at Ahmedabad it was re-numbered as Transfer Application No. 1133 of 2001.

4. That the Government of Gujarat, on 22-10-1999 issued a Notification under the Bombay Reliefs Undertakings (Special Provisions) Act 1958 (hereinafter referred to as the BRU Act) had declared the petitioner to be a relief undertaking. This was extended by other Notifications from time to time. During the period covered by such Notifications, the petitioner filed an

application on 5-2-2003 before DRT Ahmedabad claiming that the O.A. of the bank is liable to be dismissed as per the provisions of Order 7 Rule 11 of the CPC or such analogous provision. It was numbered as Exh.R-52.

On 20-2-2003 the bank filed its reply to Exh.R-52.

5. On 25th July 2003 the petitioner and others filed an application for stay of further proceedings in the Transferred Application No.1133/01 (O.A.380/2000). The stay of further proceedings was prayed for on the ground that during the operation of the Notification under the BRU Act, no proceedings can continue in relation to the undertaking covered by that Act and notified as such under that Act. The bank filed its reply to the application which was numbered as Exh.

R-64.

6. Both the applications Exhs. R-52 and R-64 were taken up by the DRT Ahmedabad for hearing and were decided by its order dated 14-11-2003. By the said order both the applications were rejected. It is pertinent to note that right from July 2000 there was interim order operative restraining the petitioner from selling or in any manner alienating properties belonging to the petitioner which were hypothecated or mortgaged with the bank. Earlier on 10-3-2003 the Supreme Court of India considered several applications

made before High Court & Supreme Court,including the contempt proceeding before the Rajasthan High Court and passed an order issuing various directions to the DRT Ahmedabad to dispose of the matter finally. Earlier the petitioner had filed Exh.R-37 for stay of the O.A. on the same ground namely operation of the Notification under BRU Act. However Exh.R-37 was disposed of on 16-9-2003 on the statement made by the petitioner that the Notification under BRU has expired. The application of the petitioner for dismissal of the O.A. on the ground of maintainability (Exh.R-52) was however pending. So was pending Exh. R-52 which came to be decided as aforesaid by order dated 14-11-2003.

7. On 25-11-2003 Misc. Appeal was therefore filed before the DRAT, Bombay challenging the stay order which was registered as Misc.Appeal No. 374/2000. The learned Chair Person of the appellate Tribunal heard the matter on 1-12-2003 and dismissed the appeal, against the order dated 14-11-2003 as passed by the DRT Ahmedabad, rejecting both the Exhs. R-52 and R-64. This rejection of these two exhibits was confirmed by the appellate Tribunal. These two orders are now challenging in this writ petition on the ground mentioned therein.

8. The contention raised on behalf of the petitioner

stated in nutshell is that in view of the various Notifications issued under the BRU Act, both the applications, i.e. Exhs. R-52 and R-64 were liable to be allowed as no proceedings in view of the provisions of BRU Act could continue in relation to the notified company. We have to examine this submission in light of the law applicable in the present case.

9. According to the petitioner, the application could not be proceeded with as it was barred by provisions of BRU Act. Reliance was placed to various Notifications and provisions of BRU Act to substantiate this submission. It was this submission which was rejected by the DRT Ahmedabad and the rejection was upheld by the DRAT Bombay.

10. We will have therefore to consider the correctness of this contention, in the light of the provisions of BRU Act, which is applicable to the entire State of Gujarat. Section 2 clause (2) defines what relief the undertaking means. The relief undertaking means that an industrial undertaking in respect of which **a declaration under section 3 is in force.** Section 3 prescribes the conditions subject to which such Notification can issue and provides that notification under that section shall be effective for a period not extending 12 months and the period of 12 months is

renewable by similar notification from time to time,
the maximum period being five years.

11. It would be necessary to note the period during which the Notifications issued under BRU Act operative are as under.

1) 22-10-1999 to 21-10-2000

2) 22-10-2000 to 21-10-2001

3) 30-04-2002 to 29-04-2003

4) 16-07-2003 to 15-07-2004

5) 16-07-2004 to 15-07-2005

It will thus be seen that at the time when the order was passed, the Notification was operative. It is also necessary to note the provisions of section 4 of the Act to consider whether during this period the proceedings could be continued or not. Section 4 provides that notwithstanding any law, custom etc. the State Government may by notification in the official gazette direct that:

i) All or any of the laws mentioned in the Schedule to the BRU Act or any provisions thereof shall not apply during the operation of the notification.

2) All agreements, settlements, awards etc. made

under any of the laws in the Schedule to the BRU Act shall be suspended during the operation of the notification.

3) All rights, privileges, obligations and liabilities etc. will have to be enforced or determined in accordance with the provisions of section 4.

4) Any remedy for the enforcement of any right, privilege, obligation, or liability shall be suspended and all proceedings relative thereto pending before any court, tribunal, or authority shall be stayed during the operation of the notification.

12. It is then provided that all these applications etc. referred to in clause (a) of section 4 shall be revived and enforceable, and proceedings will be continued after the notification ceases to apply. The case of the petitioner consequently is that the proceedings before the DRT during the period between 22-10-1999 to 15-7-2005 could not proceed. Consequential submission being that if the proceeding could not go on or were statutorily stayed, no interim orders of any kind could be made. Factually the period of five years has come to an end. Now there is no

question of such notification being again issued by reason of the application of the provisions of section 4(1)(b). The proceedings are liable to be continued and therefore now there is no substance in either of the two applications i.e. Exhs. R-52 and R-64.

13. All that is provided by section 4 of the BRU Act is suspension of proceedings or rights accrued to any person during the operational period of notification issued under section 4 of the Act. That being the position after 10th July 2005 nothing could stop the proceedings pending before the tribunal. All that happened was the proceedings were liable to be stayed during the operation of the notification. Factually because of several applications made by the petitioner, also before the Supreme Court, there was no progress in the matter. In fact inspite of the directions of the Supreme Court of India dated 10-3-2003 the proceedings pending before the tribunal were not disposed of. All questions regarding continuation of the proceedings, existence of jurisdiction to proceed with the matter, effect of the provisions of section 4 on the said proceedings, no longer required any adjudication as the same have become purely academic after expiry of the notification of 10th July 2005.

14. Yet another aspect which deserves consideration is

the fact that inspite of the order of the Supreme Court dated 8th March 2003, orders passed by Rajasthan High Court on 14-5-2001 and aforesaid order dated 8-8-2002 in Contempt petition were to be complied with and the proceedings were to be completed as early as possible. It would be seen, from the contempt proceeding and other orders mentioned, that though there was an order restraining the petitioner from alienating in any manner any property covered with the hypothecation or mortgage with the bank, some actions were taken by the petitioner which ultimately given raise to contempt Petition No. 147/2002 before the High Court of Rajasthan. Reasons for noting this aspect is though there was no factual stay of the proceedings, before the DRT as contemplated by section 4(1)(a)(iv) no injury of any kind is established by the petitioner. In this view of the matter we need not go into the question as to whether proceedings commenced under the Act are liable to be stayed under the BRU Act because the provisions of section 4 of the BRU Act only suspends certain rights and application of certain laws or proceedings under certain laws mentioned in the Schedule to the Act and the Act of DRT is not the one such act. It would be appropriate that this question is left open for adjudication in appropriate proceedings.

15. In the result, therefore, the petition fails and is dismissed. Normally we would not have impose any cost to the petitioner. But the Supreme Court itself has by its order dated 10th March 2003 observed that if any frivolous applications are made like the petitioner before the tribunal, it may not hesitate to impose exemplary cost. As per the facts narrated by the petitioner itself, the effect of notification under BRU Act finally ceased on 16th July 2005. Yet the petition was placed for argument. It is also pertinent to note in the circumstances, that similar applications as Exh.64 was earlier made and was required to be disposed of, because at the relevant time no notification under BRU Act was operative. Primafacie therefore it appears that all the applications and proceedings are taken up by the petitioner as a dilatory tactics to avoid to pay the money due as prayed by the O.A. We therefore deem it fit and proper to saddle cost in this petition. The costs are quantified as Rs. 5000/-. The petition is therefore, dismissed with costs of Rs. 5000/-.

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